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Chan Kok Poh v Public Prosecutor

B

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NOS J-05–25–01 OF 2022, J-05–24–01 OF 2022 AND J-05–23–01 OF 2022

HADHARIAH SYED ISMAIL, AZMAN ABDULLAH AND AZMI ARIFFIN JJCA

4 SEPTEMBER 2023

C

Criminal Procedure — Appeal — Appeal against decision — Appellant charged under s 14(a) of Sexual Offences Against Children Act 2017 — Appellant's application to refer three questions to High Court declined — High Court upheld decision of sessions court — Preliminary objection by respondent — Whether decision of High Court was appealable — Courts of Judicature Act 1964 ss 3 & 50

D

The appellant was tried in the sessions court at Johor Bahru for three offences under s 14(a) of the Sexual Offences Against Children Act 2017. The appellant pleaded not guilty. At the end of the prosecution's case, the learned sessions court judge found that the prosecution had succeeded in establishing a prima facie case against the appellant and called upon him to enter his defence on all the charges. The defence then applied to the sessions court to refer three questions to the High Court pursuant to s 30 of the Courts of Judicature Act 1964 ('the CJA'). The prosecution objected to the references of all the questions to the High Court. After hearing all parties, the sessions court declined the application and ruled that s 30 of the CJA empowered the sessions court to make the appropriate ruling. Dissatisfied with the findings, the appellant had filed three appeals to the Muar High Court. In his ground of judgment, the learned High Court judge found that there was no error on the part of the learned sessions court judge that warranted appellate intervention. The decisions of the learned sessions court judge were upheld and it was directed that these pending cases to be remitted to the sessions court for the continuation of the trial until its final conclusion. Hence, this appeal. The respondent ie the public prosecutor had filed a notice of preliminary objection on ground that the decision of the High Court judge on the above issue did not fall within the definition of 'decision' under s 3 of the CJA and as such, was not appealable under s 50 of the CJA because the trial of the appellant had not been finally disposed of yet. Hence, the ruling of the learned sessions court judge in calling the appellant to enter his defence on the three charges did not constitute a final order.

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Held, dismissing the appeal:

(1) The wording of s 3 of the CJA were clear and unequivocal where the right of appeal against any decision of the High Court in respect of criminal matter did not include any ruling made in the course of a trial or hearing of any cause or matter which did not finally dispose of the rights of the parties. There was no reason to disagree with the preliminary objection raised by the learned deputy public prosecutor. Therefore, the preliminary objection was allowed. The instant appeal was not competent because the ruling made by the learned sessions court judge ordering the appellant to enter on his defence was a ruling that would not have the effect of finally disposing of the appellant rights in the trial. Hence, this court did not seize the jurisdiction to hear the appellant's appeals. These cases were directed to be remitted back to the sessions court for the same learned trial judge to hear the defence of the appellant (see paras 13 & 19).

[Bahasa Malaysia summary

Perayu telah dibicarakan di mahkamah sesyen di Johor Bahru atas tiga kesalahan di bawah s 14(a) Akta Kesalahan-Kesalahan Seksual Terhadap Kanak-Kanak 2017. Perayu mengaku tidak bersalah. Di akhir kes pendakwaan, hakim mahkamah sesyen yang bijaksana mendapati bahawa pihak pendakwaan telah berjaya membuktikan kes prima facie terhadap perayu dan memintanya membela diri atas semua pertuduhan. Pihak pembelaan kemudian memohon kepada mahkamah sesyen untuk merujuk tiga soalan kepada Mahkamah Tinggi menurut s 30 Akta Mahkamah Kehakiman 1964 ('AMK'). Pihak pendakwaan membantah rujukan semua soalan kepada Mahkamah Tinggi. Selepas mendengar semua pihak, mahkamah sesyen menolak permohonan itu dan memutuskan bahawa s 30 AMK memberi kuasa kepada mahkamah sesyen untuk membuat keputusan yang sewajarnya. Tidak berpuas hati dengan penemuan tersebut, perayu telah memfailkan tiga rayuan ke Mahkamah Tinggi Muar. Dalam alasan penghakimannya, hakim Mahkamah Tinggi yang bijkasana mendapati bahawa tiada kekhilafan di pihak hakim mahkamah sesyen yang bijaksana yang memerlukan campur tangan rayuan. Keputusan hakim mahkamah sesyen yang bijaksana telah dikekalkan dan ia diarahkan supaya kes-kes yang belum selesai ini dihantar ke mahkamah sesyen untuk meneruskan perbicaraan sehingga keputusan muktamad. Oleh itu, rayuan ini. Responden iaitu pendakwa raya telah memfailkan notis bantahan awal atas alasan bahawa keputusan hakim Mahkamah Tinggi mengenai isu di atas tidak termasuk dalam takrifan 'keputusan' di bawah s 3 AMK dan oleh itu, tidak boleh dirayu di bawah s 50 AMK kerana perbicaraan perayu masih belum selesai. Oleh itu, keputusan hakim mahkamah sesyen yang bijaksana dalam memanggil perayu untuk membela diri atas tiga pertuduhan itu tidak menjadi perintah muktamad.

Diputuskan, menolak rayuan:

(1) Perkataan s 3 AMK adalah jelas dan nyata di mana hak merayu terhadap mana-mana keputusan Mahkamah Tinggi berkenaan dengan perkara jenayah tidak termasuk apa-apa ketetapan yang dibuat semasa perbicaraan atau pendengaran apa-apa kausa atau perkara yang akhirnya tidak melupuskan hak pihak-pihak. Tiada sebab untuk tidak bersetuju dengan bantahan awal yang dibangkitkan oleh timbalan pendakwa raya yang bijaksana itu. Oleh itu, bantahan awal dibenarkan. Rayuan ini tidak kompeten kerana keputusan yang dibuat oleh hakim mahkamah sesyen yang bijaksana yang memerintahkan perayu membela diri adalah keputusan yang tidak akan memberi kesan akhirnya melupuskan hak perayu dalam perbicaraan. Oleh itu, mahkamah ini tidak mengambil bidang kuasa untuk mendengar rayuan perayu. Kes-kes ini diarahkan untuk dihantar semula ke mahkamah sesyen untuk hakim bicara yang sama mendengar pembelaan perayu (lihat perenggan 13 & 19).]

Cases referred to

Ahmad Zubair @ Ahmad Zubir bin Hj Murshid v PP [2014] 6 MLJ 831; [2014] 9 CLJ 289, FC (refd)
Dato' Seri Anwar bin Ibrahim v PP [1999] 1 MLJ 321; [1999] 1 CLJ 537, CA (refd)
Mohamad Ridzuan bin Zamhor lwn Pendakwa Raya [2018] 6 MLJ 606; [2018] 4 CLJ 315; [2018] 2 AMR 17, CA (refd)
Saad bin Abas & Anor v PP [1999] 1 MLJ 129; [1998] 4 CLJ 575, CA (refd)
Syarikat Tingan Lumber Sdn Bhd v Takang Timber Sdn Bhd [2003] 2 MLJ 495; [2003] 2 CLJ 177, CA (refd)
PP v Mohamed Shahabuddin Mohamed Ali & Ors [2019] 1 MLJ 520; [2018] 8 CLJ 535, CA (refd)

Legislation referred to

Courts of Judicature Act 1964 ss 3, 30, 50(2)
Evidence Act 1950 s 133A
Federal Constitution arts 5, 8
Penal Code s 354
Sexual Offences Against Children Act 2017 ss 14(a), 18

Appeal from: *Chan Kok Poh v Public Prosecutor* [2022] 9 MLJ 755 (High Court, Muar)

Jarrett Ong (Ong, Ric & Partners) for the appellant.
Fauziah bt Daud (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Azmi Ariffin JCA:

[1] The appellant was tried in the Sessions Court at Johor Bahru with the following offences under s 14(a) of the Sexual Offences Against Children Act 2017 ('the SOACA'):

(a) first charge:

> Bahawa kamu pada awal bulan March tahun 2018, jam lebih kurang 3.00 petang bertempat di Tokong Ci Guang Ting, Jalan Genuang, di dalam Daerah Segamat, di dalam Negeri Johor, telah melakukan amang seksual fizikal ke atas seorang kanak-kanak lelaki (mangsa) berumur 15 tahun 3 bulan. Oleh yang demikian, kamu telah melakukan kesalahan di bawah seksyen 14(a) Akta Kesalahan-Kesalahan Seksual terhadap Kanak-Kanak 2017 yang boleh dihukum di bawah seksyen 14 Akta yang sama.

(b) second charge:

> Bahawa kamu pada 18/8/2017 jam lebih kurang 9.00 pagi bertempat di Tokong Ci Guang Ting, Jalan Genuang, di dalam Daerah Segamat, di dalam Negeri Johor, telah melakukan amang seksual fizikal ke atas seorang kanak-kanak lelaki (mangsa) berumur 15 tahun 10 bulan. Oleh yang demikian, kamu telah melakukan kesalahan di bawah seksyen 14(a) Akta Kesalahan-Kesalahan Seksual Terhadap Kanak-Kanak 2017 yang boleh dihukum di bawah seksyen 14 Akta yang sama.

(c) third charge:

> Bahawa kamu pada 5/1/2019 jam lebih kurang 10.00 pagi bertempat di Tokong Ci Guang Ting, Jalan Genuang, di dalam Daerah Segamat, di dalam Negeri Johor, telah melakukan amang seksual fizikal ke atas seorang kanak-kanak lelaki (mangsa) berumur 16 tahun 11 bulan. Oleh yang demikian, kamu telah melakukan kesalahan di bawah seksyen 14(a) Akta Kesalahan-Kesalahan Seksual Terhadap Kanak-Kanak 2017 yang boleh dihukum di bawah seksyen 14 Akta yang sama.

[2] The appellant pleaded not guilty and was tried by the Sessions Court in Segamat, Johor. At the end of the prosecution's case, on 7 June 2020, the learned sessions court judge found that the prosecution has succeeded in establishing a prima facie case against the appellant and called upon him to enter his defence on all the charges.

[3] The defence then applied to the sessions court to referred three questions to the High Court pursuant to s 30 of the Courts of Judicature Act 1964 which are as follows:

(a) Whether section 18 Sexual Offences against Children Act 2017 empowers a trial judge to convict an accused person based on uncorroborated

evidence of a child which is contrary to Article 5 and 8 of the Federal Constitution;

(b) Whether section 18 Sexual Offences against Children Act 2017 empowers a trial judge to convict an accused person based on uncorroborated evidence of a child which is contrary to Section 133A of the Evidence Act 1950; and

(c) Whether section 18 Sexual Offences against Children Act 2017 empowers a trial judge to convict an accused person based on uncorroborated evidence of a child and therefore has relieved the Public Prosecutor of the burden of proving a criminal prosecution under section 173(m) of the Criminal Procedure Code.

[4] The prosecution objected to the references of all these questions to the High Court and asked the sessions court to reject the application.

[5] After hearing all parties, the sessions court declined the application and ruled that s 30 of the Courts of Judicature Act 1964 empowers the sessions court to make the appropriate ruling. The followings were, inter alia, the basis of the sessions judge's findings (see at pp 251–252 encl 10 *RR Jld* 2):

(a) s 30 Act 91 is not a mandatory provisions, as the word used is 'may';

(b) there is no proper application filed or made by the learned counsel for or on behalf the accused for the proceeding before the court to be transferred to the High Court;

(c) the learned counsel only resort to this court to decide on the issue whether this court has jurisdiction to transfer the proceedings to the High Court in which this court concur with that;

(d) in the event this court is wrong, be it with or without proper application filed or made by the learned counsel for or on behalf the accused for the proceeding before this court to be transferred to the High Court, this Court found this case does not warrant for this court to transfer the proceeding to the High Court as the law is settled on the issue of corroboration evidence for sexual offence cases involving child victim. s 18 of Sexual Offences Against Children Act 2017 and s 133A of the Evidence Act 1950 are not conflicting provisions, as the words used in s 18 is 'may' which is not mandatory in nature.

[6] Dissatisfied with the said findings, the appellant had filed three appeals to the High Court Muar, Johor Darul Ta'zim. In his ground of judgment, the learned High Court judge found that there was no error on the part of the learned sessions court judge that warranted appellate intervention. He uphold the decisions of the learned sessions court judge and directed that these pending cases to be remitted to the sessions court for the continuation of the trial until its final conclusion.

[7] Hence this appeal.

[8] To facilitate the determination of the three separate appeals, we find it more convenient to decide these appeals in a single judgment as they are interrelated

PRELIMINARY OBJECTION

[9] In the present appeals before us, the respondent, the public prosecutor has filed a notice of preliminary objection on ground that the decision of the High Court judge on the above issue do not fall within the definition of 'decision' under s 3 of the Courts of Judicature Act 1964 ('the CJA') and as such, was not appealable under 50 of the same Act because the trial of the appellant had not been finally disposed of yet. Hence, the ruling of the learned sessions court judge in calling the appellant to enter his defence on the three charges does not constitute a final order.

[10] On the other hand, counsel for the appellant submitted at length to persuade us that the High Court sitting on appeal had fallen into error in affirming the decision of the learned sessions court judge in that the dismissal of the appellant's applications are appealable as it qualifies as a *decision* under s 3 of the CJA as it has 'melupuskan hak pihak-pihak secara muktamad'.

OUR DECISION

[11] The relevant statutory provisions concerning an appeal from the High Court to the Court of Appeal is s 50 sub-s (1) and (2) of the CJA which provides as follows:

> 50(1) Subject to any rules regulating the proceedings of the Court of Appeal in respect of criminal appeals, the Court of Appeal shall have jurisdiction to hear and determine any appeal against any decision made by the High Court:
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> (a) in the exercise of its original jurisdiction; and
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> (b) in the exercise of its appellate or revisionary jurisdiction in respect of any criminal matter decided by the Sessions Court.
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> (2) An appeal shall lie to the Court of Appeal, with the leave of the Court of Appeal, against any decision of the High Court in the exercise of its appellate or revisionary jurisdiction in respect of any criminal matter decided by a Magistrates' Court but such appeal shall be confined to only questions of law which have arisen in the course of the appeal or revision and the determination of which by the High Court has affected the event of the appeal or revision.

[12] The word 'decision' has been defined under s 3 of the CJA as follows:

> 'decision' means judgment, sentence, or order, but does not include any ruling made

in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties.

[13] The wording of s 3 of the CJA are clear and unequivocal where the right of appeal against any decision of the High Court in respect of criminal matter does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties (see *Syarikat Tingan Lumber Sdn Bhd v Takang Timber Sdn Bhd* [2003] 2 MLJ 495; [2003] 2 CLJ 177; *Mohamad Ridzuan bin Zamhor lwn Pendakwa Raya* [2018] 6 MLJ 606; [2018] 4 CLJ 315; [2018] 2 AMR 17).

[14] Way back in 1998, one of the leading local authority on this subject is the Court of Appeal decision in *Saad bin Abas & Anor v Public Prosecutor* [1999] 1 MLJ 129; [1998] 4 CLJ 575. In that case there was a joint application by the two applicants for leave to appeal to the Court of Appeal under s 50(2) of the Courts of Judicature Act 1964 (Act 91). In essence, on 11 January 1995 each of the applicants was preferred with a charge for an offence of using criminal force on a female adult under s 354 of the Penal Code. They were jointly tried and the learned magistrate on 1 September 1996 acquitted and discharged both the applicants at the end of the case for the prosecution. The learned deputy public prosecutor appealed. On 2 April 1997 the appeal was heard and the learned judge of the High Court, Alor Setar allowed the appeal with the order that both the applicants were to enter their defence before the learned magistrate. They were not satisfied with the decision of the learned judge and so they prayed that they be granted leave to appeal to this court.

[15] The Court of Appeal speaking through Lamin Mohd Yunus PCA (as he then was) said (at p 137 (MLJ); p 586 (CLJ)):

> The order of the High Court in the present case for which leave to appeal is sought was that the applicants were to enter their defence. At the state or making the order, certainly it has no finality in its intent. Only after the close of the defence as a result of that order will there be finality. Only after the close of the defence will there be a decision to 'affect the event of the appeal', meaning that the defence story will finally determine the result of the whole case which was the purpose of the appeal.

Continuing at p 138 (MLJ); p 597 (CLJ), His Lordship said:

> So, for the purpose of s 50 (2) of the CJA, this court has to first ascertain whether the 'decision' of the High Court in ordering the applicants before us to enter their defence was a ruling that had the effect of finally disposing of their rights. Certainly not, and it would only happen after a decision had been made at the close of the defence.

[16] Reference in this connection may also be made to the case of *Dato' Seri*

Anwar bin Ibrahim v Public Prosecutor [1999] 1 MLJ 321; [1999] 1 CLJ 537 where the Court of Appeal said:

> In other words, what has been excluded from the meaning of the word 'decision' is the type of judgments and orders which is termed 'interlocutory' by *Halsbury's Laws of England* (4th Ed) para 506 at p 240, which reads:
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> > Interlocutory judgments and orders.
> >
> > An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and give no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment and merely directs how declarations of right already given in the final judgment are to be worked out, is termed 'interlocutory.
> >
> > An interlocutory order, even though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals. Shortly stated, what the amendment means is that a judgment or order which does not deal with the final rights of the parties, but is made pendente lite, and gives no final decision on the matters in dispute, is not a 'decision' within the meaning of that word in the current version of s 3 Courts of Judicature Act, and therefore is not appealable.

[17] In the subsequent case of *Ahmad Zubair @ Ahmad Zubir bin Hj Murshid v Public Prosecutor* [2014] 6 MLJ 831; [2014] 9 CLJ 289, Raus Sharif PCA (as he then was) delivering the judgment of the Federal Court had affirmed as follows:

> [32] With regard to the alternative alternative charges, the complaint by the appellant was that the charges did not contain sufficient particulars which the prosecution intended to prove against the appellant. As indicated earlier the alternative charges were charges relating to an offence of cheating under s 418 of the Penal Code. The two charges asserted that the appellant had cheated the Board of Directors of Sime Darby Bhd by omitting to inform the said Board that the NCR lands approved to Sime Darby Bhd had instead been awarded to Verticle Drive Sdn Bhd and Nature Ambience Sdn Bhd. The appellant alleged that the charges were defective as the Board of Directors of Sime Darby Sdn Bhd did not meet to discuss the acquisition of the two companies on the dates specified in both the alternative charges. It was therefore argued that there was no omission on the part of the appellant to inform the Board of Directors of Sime Darby Bhd that NCR lands approved to Sime Darby Bhd had instead been awarded to Verticle Drive Sdn Bhd and Nature Ambience Sdn Bhd.
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> [33] It can be seen from the above that the issues raised by the appellant were preliminary issues ie, basically whether the charges were defective in substance and form. The High Court as stated earlier dismissed the appellant's application to strike out the charges and to have him acquitted and discharged. Clearly the decision of the High Court was on a preliminary issue which did not finally dispose of the rights of the parties. It is thus not appealable (see: *Dato' Seri Anwar Ibrahim v Public Prosecutor* [1999] 1 MLJ 321; [1999] 1 CLJ 537; *Dato' Seri Anwar Ibrahim v Public*

Prosecutor [2010] 6 MLJ 586; [2010] 9 CLJ 625; *Dato' Seri Anwar Ibrahim v Public Prosecutor* [2011] 2 CLJ 845; *Public Prosecutor v Dato Seri Anwar Ibrahim* [2014] 5 CLJ 805).

[34] We are of the view that the appeal by the appellant to the Court of Appeal and later to this court on a preliminary issue whether the charges against the appellant in the sessions court were defective in form and substance was clearly an abuse of the court process. This is especially so when the appellant concurrently has made similar application before the sessions court to have the charges preferred against him to be struck out.

And that the application before the sessions court was dismissed. This has raised another issue of whether the appellant after making an application to strike out the charges before the sessions court can now, as he did, apply the same to the High Court relying on the case of *Karpal Singh & Anor v Public Prosecutor* as the authority for such a proposition. It is our judgment that it cannot be done as *Karpal Singh & Anor v Public Prosecutor* can no longer be the authority for such proposition.

[35] In this respect we wish to point out that at the time *Karpal Singh & Anor v Public Prosecutor* was decided, preliminary issues were preliminary issues were still appealable to the higher courts as they were deemed as 'decision' made by the court. At that material time under s 3 of the CJA the term decision was defined as follows:

> 'decision' means judgment, sentence or order.

[36] However the CJA was amended in year 1998. Section 50 of the CJA sets out the jurisdiction of the Court of Appeal to hear and determine criminal appeals as follows:

> 50 Jurisdiction to hear and determine criminal appeals
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> (1) Subject to any rules regulating the proceedings of the Court of Appeal in respect of criminal appeals, the Court of Appeal shall have jurisdiction to hear and determine any appeal against any decision made by the High Court:
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> (a) in the exercise of its original jurisdiction; and
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> (b) in the exercise of its appellate or revisionary jurisdiction in respect of any criminal matter decided by the Sessions Court.
>
> (2) An appeal shall lie to the Court of Appeal, with the leave of the Court of Appeal, against any decision of the High Court in the exercise of its appellate or revisionary jurisdiction in respect of any criminal matter decided by a Magistrate's Court but such appeal shall be confined to only questions of law which have arisen in the course of the appeal or revision and the determination of which by the High Court has affected the event of the appeal or revision. And the term 'decision' as employed in section 50(1) of the JCA is defined in the amended section 3 of the CJA in this manner:
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> (3) In this Act, unless the context otherwise requires:
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> 'decision' means judgment, sentence or order (but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties).

[37] The position on the newly amended s 3 of the CJA has been clearly set out in the decision of this court in the case of *Dato Seri Anwar Ibrahim v Public Prosecutor* [2010] 9 CLJ 625 at p 636 where the court pointed out the underlying reasons for the amendment to the definition of 'decision' in s 3 of the CJA which came into effect on 31 July 1998 in the following manner:

> [24] The underlying reason behind the amendment to the definition of 'decision' in s 3 of the CJA is to stop parties from stalling a trial before the trial court by filing appeal after appeal on rulings made by the trial court in the course of a trial. Apart from that, the definition of 'decision' by itself is sufficiently clear and it is the court's duty to give effect to the same. Justice demands that cases should move without unnecessary interruption to their final conclusion. That is what the amendment seeks to achieve as evident from the explanatory statement to the Bill which reads:
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> > 2. Clause 2 seeks to amend section 3 of Act 91. At the moment, in the course of hearing a case, if the court decides on the admissibility of any evidence or document, the dissatisfied party may file an appeal. If such appeal is filed, the court has to stop the trial pending the decision of the appeal by the superior court. This cause a long delay in the completion of the hearing, especially when an appeal is filed against every ruling made by the trial court. The amendment is proposed in order to help expedite the hearing of cases in trial courts.
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> [25] Quite apart from the explanatory statement to the Bill the definition of 'decision' by itself, to our mind, is is sufficiently clear, and it is the duty of the court to give effect to the same. Justice demands that cases should move without unnecessary interruption to their final conclusion. That is what the amendment seeks to achieve. The right of a party who is aggrieved by a ruling, after all, is not being compromised, as the party can always raise the issue during the appeal, if any, to be filed after the trial process is brought to its conclusion.

[38] From the above explanation given by this court in the case of *Dato Seri Anwar Ibrahim v Public Prosecutor* it is obvious that Parliament is not oblivious to appeals which tend to stall proceedings and delay speedy disposal of cases. The new definition of the word decision in the amended s 3 of the CJA which we have laid emphasis to in the preceding paragraph does not include a judgment, order or ruling which does not finally dispose of the rights of the parties on the matters in dispute. With the amended s 3 of the CJA, appeals filed based on technical rulings which are interlocutory in nature are now things of the past. Such appeals are incompetent to be laid before the appellate court as it is clearly precluded by law.

[39] In this instant case the appellant had applied before the High Court to quash the charges and order an acquittal against him. The application was dismissed. The appellant had also applied before the sessions court for the charges to be quashed and prayed that a discharge not amounting to acquittal to be ordered against him. The application was also dismissed. The way we perceive it, the orders of the courts below would connote that the matter should proceed for trial as the charges preferred against the appellant still stand. Clearly the decision not to strike out the charges before the commencement of the trial as was done in this instant case does not amount to disposal of the rights of the parties. Since the order gives no final

decision on the matters in dispute, it is not a 'decision' within the definition under s 3 of the CJA and therefore is not appealable.

[40] It was for the above reasons we are hold that this appeal is on a matter which is incompetent to be laid before this court and was therefore struck out.

[18] Reference in this issue may also be made to the case of *Public Prosecutor v Mohamed Shahabuddin Mohamed Ali & Ors* [2019] 1 MLJ 520; [2018] 8 CLJ 535, where the Court of Appeal there said:

[23] So too here. We are of the considered opinion that the decision of the learned trial judge in reducing the charge from the offence of murder under s 302 of the Penal Code to one of culpable homicide under s 304(a) of the same Code and in calling the respondents to enter their defence on the amended charge is not a decision within the meaning of s 3 of the CJA and, therefore, is not appealable.

[24] In this instant appeal, the respondents were scheduled to plead on amended charge on 7 September 2017. However, the trial was postponed due to the appeal filed by the PP against the decision of the learned trial judge in amending the charge. Certainly, the decision of the learned trial judge has not finally dispose of the rights of the parties. The learned trial judge had not made a final determination of the rights of the parties at this stage. Something still had to be done by the learned trial judge, ie, to hear the respondents' defence and make a decision pursuant to s 182A of the Criminal Procedure Code. Only a decision at the close of the defence case would effectively dispose of the rights of the parties. Further, to have a final decision in this case, the respondents must be convicted and sentenced or discharge and acquitted, as the case may be. It would, in our view, be incongruous to allow the PP to appeal to this court before the final judgment is meted out by the trial court.

[25] Our courts have applied a 'salutary general rule' in criminal and civil proceedings for many years that appeals are not entertained piecemeal. Decision of the High Courts has generally been held to be appealable only if they have three attributes. They must be final in effect, definitive of the rights of the parties, effectively dispose of a substantial part of the relief claimed in the main proceedings and it does not leave anything to be done in the trial with respect of the merits of the case. In other words, the rule, in general, permits an appeal to be taken only from a final decision which disposes of all the issues presented in the trial. Quite obviously, all the issues in the case at bench were not disposed of if the respondents have yet to testify in their defence.

CONCLUSION

[19] Based on the aforesaid reasons, we unanimously find no reason to disagree with the preliminary objection raised by the learned deputy public prosecutor. Therefore, preliminary objection is allowed. In our considered opinion, the instant appeal was not competent because the ruling made by the learned sessions court judge ordering the appellant to enter on his defence was a ruling that would not have the effect of finally disposing of the appellant rights in the trial. The law is now obvious. Hence, this court does not seize the

jurisdiction to hear the appellant's appeals. The three appeal is therefore dismissed. We direct that these cases to be remitted back to the sessions court for the same learned trial judge to hear the defence of the appellant.

Appeal dismissed.

Reported by Nabilah Syahida Abdullah Salleh